



**US Army Corps  
of Engineers**  
St Paul District

# **Public Notice**

**ISSUED: May 21, 2007**

**REFER TO: 2007-2409-TJS**  
**SECTION: 404 – Clean Water Act**

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ISSUANCE OF SPECIAL LOP PERMITTING PROCEDURES TO ADDRESS VIOLATIONS OF THE CLEAN WATER ACT IN THE JACKSON ESTATES FIRST ADDITION RESIDENTIAL DEVELOPMENT IN HERMANTOWN, MINNESOTA.

1. PURPOSE OF THIS PUBLIC NOTICE. The purpose of this public notice is to announce the issuance of letter of permission procedures for permit applications consistent with the Jackson Estates First Addition settlement proposal.
2. PROJECT LOCATION. The Jackson Estates First Addition is located in the NE ¼ of Sec. 16, T. 50N., R15W., St. Louis County, Minnesota (Figure 1).
3. BACKGROUND. On March 19, 2007 the St. Paul District, Corps of Engineers (Corps) issued a public notice that described and requested public comment on special permitting procedures to resolve the Clean Water Act violations at the Jackson Estates First Addition. The procedures allow individual homeowners in the development to voluntarily resolve the Clean Water Act violations on their property by applying for Department of the Army permits to implement the “on-the ground” activities contained in a settlement proposal prepared by the Corps for the U.S. Department of Justice (USDOJ). If a favorable determination is made on a permit application, the authorization would consist of a Section 404 Letter of Permission (LOP). These special permitting procedures could also be used to authorize activities that are part of a consent decree filed in U.S. District Court. The on-the-ground activities would include wetland restoration where environmentally beneficial and technically feasible, after-the-fact authorizations and compensatory mitigation for all unauthorized discharges that would remain in-place, and compensatory mitigation for secondary effects required as a condition of the Corps permit issued for the Jackson Estates First Addition in November 2002 which has not been provided. These activities will be implemented through a combination of wetland restoration, after-the-fact permitting, and compensatory mitigation.

The on-the-ground component also contains a provision for evaluating additional minor discharges of fill material not contemplated by the original permit. These additional discharges would occur in small wetland pockets that are hydrologically isolated and functionally degraded as a result of the pattern and degree of disturbance at the site. Most of these wetland areas are surrounded by developed areas (homes, landscaping, and roads) on over ninety percent of their perimeter. Compensatory mitigation will be required for all of these additional impacts.

The Corps received four comment letters in response to the March 19, 2007 public notice. Of these, two expressed support for the proposal, one had no opinion, and one opposed the procedures. After considering these comments and conducting a thorough analysis of the special permitting process, including an environmental assessment, public interest review, and Section 404(b)(1) guidelines compliance determination, the Corps has concluded the proposed procedures are not contrary to the public interest and the special permitting procedures should be issued.

**CEMVP-OP-R (2007-2409-TJS)**

**SUBJECT: Issuance of LOP Permitting Procedures for the Jackson Estates First Addition**

A lot by lot summary of the Corps settlement proposal is provided in Table 1.

4. CATEGORIES OF ACTIVITIES COVERED BY THESE LOP PROCEDURES. The special permitting procedures described in this public notice are limited to discharges of dredged or fill material in the Jackson Estates First Addition associated with implementation of the settlement agreement developed by the Corps (see Table 1). Each LOP application received by the Corps seeking authorization under these procedures will be subject to a consistency review with the settlement proposal. Applications determined to be inconsistent with the settlement proposal are not eligible for the special permitting procedures and will be reviewed as standard individual permits. Applications determined to be consistent will be subjected to an abbreviated environmental assessment, 404(b)(1) guidelines compliance assessment, and public interest review that focuses on the site-specific aspects of the application not addressed during the Corps' evaluation of the special permitting procedures.

5. ADDITIONAL INFORMATION. Supplemental information on the Corps settlement proposal is available upon request by contacting Mr. Tim Smith in our St. Paul Office at 651 290-5432. Inquiries may also be submitted through the web site or mailed to: Regulatory Branch, St. Paul District, Corps of Engineers, ATTN: Tim Smith, 190 Fifth Street East, Saint Paul, MN 55101-1638.

These special permitting procedures do not replace or restrict the applicability of any other Department of the Army general permit or letter of permission.

6. STATE SECTION 401 WATER QUALITY CERTIFICATION.

Valid Section 404 permits cannot be issued for any activity unless state water quality certification for the activity is granted or waived pursuant to Section 401 of the Clean Water Act. The state Section 401 authority in Minnesota is the Minnesota Pollution Control Agency (MPCA). The St. Paul District has provided this public notice and a copy of the special LOP permitting procedures for the Jackson Estates First Addition to the MPCA. If MPCA needs any additional information in order for the Section 401 application to be considered complete by MPCA, the MPCA has indicated that it will request such information from the Corps. Under these LOP procedures, it is the permit applicant's responsibility to ensure that the MPCA has received a valid, complete application for state Section 401 certification and to obtain a final Section 401 action from the MPCA.

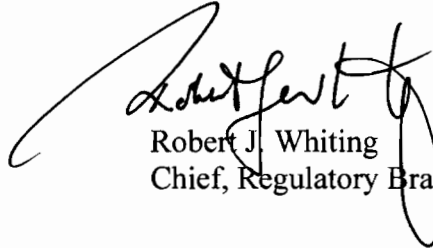
The MPCA has indicated that this public notice serves as its public notice of the application for Section 401 water quality certification under Minnesota Rules Part 7001. The MPCA has also indicated that the Section 401 process shall begin to commence upon the issuance date of this public notice unless the MPCA notifies both the St. Paul District and the permit applicant to the contrary, in writing, before the expiration date of this public notice.

Any comments relative to MPCA's Section 401 Certification for the activity proposed in this public notice may be sent to:

**CEMVP-OP-R (2007-2409-TJS)**

**SUBJECT: Issuance of LOP Permitting Procedures for the Jackson Estates First Addition**

Minnesota Pollution Control Agency  
Regional Environmental Management Division  
Attention 401 Certification  
520 Lafayette Road, North  
St. Paul, Minnesota 55155-4194



Robert J. Whiting  
Chief, Regulatory Branch

Enclosures

NOTICE TO EDITORS: This public notice is provided as background information and is not a request or contract for publication.

**Table 1**  
**Summary of Wetland Restoration and Compensatory Mitigation**  
**Jackson Estates First Addition**

Summary of Compliance Inspections					Proposed Resolution			Mitigation				
Lot	Direct Fill Authorized by Permit	Drainage Authorized by Permit	Total Authorized Impacts <sup>1</sup>	Total Measured Impacts <sup>2</sup>	Unauthorized Impacts <sup>3</sup>	Unauthorized Dredged or Fill Material to be Retained	Additional Wetland Fills per Settlement	Area of Wetland to be Restored	Unauthorized Discharges to be Retained (1.5:1)	Assumed Future Fills per Settlement (1:1)	Secondary Effects (0.5:1)	Total Mitigation Requirement
Block 1 Lot 1	0	6,533	6,533	13,066	6,533	6,533	0	0	9,800	0	0	9,800
Block 1 Lot 3	0	2,613	2,613	3,048	435	435	0	0	653	0	109	761
Block 1 Lot 4	0	3,049	3,049	3,049	0	0	0	0	0	0	4,356	4,356
Block 1 Lot 7	2,500	1,312	3,812	9,377	5,565	3,453	0	2,112	5,180	0	4,896	10,076
Block 1 Lot 8	5,000	14,598	19,598	29,830	10,232	5,982	0	4,250	8,973	0	2,125	11,098
Block 1 Lot 9	5,000	1,146	6,146	20,171	14,025	9,320	8,718	4,705	13,980	8,718	3,027	25,725
Block 1 Lot 14	0	0	0	18,368	18,368	11,546	963	6,822	17,319	963	3,780	22,062
Block 1 Lot 15	5,000	3,332	8,332	21,378	13,046	0	0	13,046	0	0	6,523	6,523
Block 1 Lot 16	5,000	3,883	8,883	16,885	8,002	8,002	8,504	0	12,003	8,504	5,093	25,600
Block 1 Lot 17	5,000	0	5,000	25,128	20,128	17,384	0	2,744	26,076	0	10,994	37,070
Block 1 Lot 18	5,000	0	5,000	14,374	9,374	9,374	11,703	0	14,061	11,703	5,693	31,457
Block 1 Lot 19	5,000	3,274	8,274	21,835	13,561	8,042	8,036	5,519	12,063	8,036	3,424	23,523
Block 1 Lot 20	5,000	9,147	14,147	14,374	227	0	0	0	0	0	9,816	9,816
Block 2 Lot 1	0	13,503	13,503	30,926	17,423	9,360	0	8,063	14,040	0	4,032	18,072
Block 2 Lot 2	5,000	11,116	16,116	32,969	16,853	9,640	0	7,213	14,460	0	3,607	18,067
Block 2 Lot 3	1,500	1,742	3,242	5,661	2,419	0	0	2,419	0	0	11,011	11,011
Block 2 Lot 4	5,000	14,374	19,374	47,043	27,669	21,809	0	5,860	32,714	0	2,930	35,644
Block 3 Lot 1	0	4,791	4,791	13,847	9,056	9,056	0	0	13,584	0	1,307	14,891
Block 3 Lot 2	0	130	130	609	479	479	0	0	719	0	2,614	3,332
Block 4 Lot 1	5,000	947	5,947	19,009	13,062	11,283	6,564	1,750	16,925	6,564	3,750	27,239
Block 4 Lot 2	5,000	0	5,000	20,056	15,056	14,126	4,559	930	21,189	4,559	3,185	28,933
Block 4 Lot 3	3,500	1,217	4,717	22,561	17,844	12,351	3,390	5,801	18,527	3,390	3,393	25,309
Block 4 Lot 4	0	1,306	1,306	8,276	6,970	4,760	3,211	75	7,140	3,211	1,269	11,620
Outlet	182,081	0	182,081	187,081	5,000	0	0	5,000	0	0	91,041	91,041
TOTALS		square feet acres	347,594 7.98	598,921 13.75	251,327 5.77	172,935 3.97	55,648 1.28	76,309 1.75	259,403 5.96	55,648 1.28	187,970 4.32	503,020 11.55

**NOTES:**

- 1 - Total Authorized Impacts is the sum of the authorized direct fill and the authorized drainage.
- 2 - Total measured impacts is the sum of the authorized drainage and the fill impacts measured during the compliance inspections.
- 3 - Unauthorized impacts is the total measured impacts less the total authorized impacts.

All figures are preliminary and will be verified following internal quality assurance/quality control.

**Clean Water Act Section 404 Special Permitting Procedures,  
Terms, and Conditions for the Jackson Estates First Addition,  
Hermantown, Minnesota**

**SECTION 404 LETTERS OF PERMISSION**

Individual homeowners in the Jackson Estates First Addition in Hermantown, Minnesota may request Section 404 authorization from the St. Paul District to implement the on-the-ground components of a proposed settlement under the Letter of Permission (LOP) procedures specified in this document. These procedures may also be used to authorize activities that are part of a consent decree filed in U. S. District Court.

**CONDITIONS**

All LOP authorizations are subject to the provisions and conditions specified in these special permitting procedures. In addition, authorizations may be subject to project-specific special conditions identified in the St. Paul District's LOP for the project. Refer to the information below for a description of the special permitting procedures, eligibility requirements, conditions, and application instructions.

**PROJECT DESCRIPTION AND LOCATION**

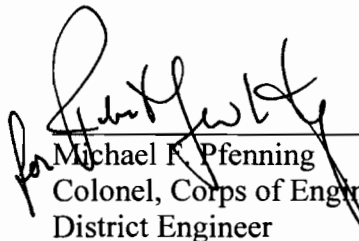
These special permitting procedures apply only to discharges of dredged or fill material into waters of the United States in the Jackson Estates First Addition, Hermantown, Minnesota.

**DETERMINATION OF IMPACTS**

All impacts to waters of the United States associated with activities regulated under Section 404 of the Clean Water Act and any related draining, excavation, or inundation are included in determining a project's total impact. Projects in waters and/or wetlands that are subject to the Corps' Section 404 jurisdiction that do not involve a discharge of dredged or fill material do not require a Section 404 permit.

**EFFECTIVE DATE:**

The attached special permitting procedures become effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

  
Michael F. Pfennig  
Colonel, Corps of Engineers  
District Engineer

May 18, 2007  
Date



## **LOP Procedures, Terms, and Conditions**

Project proponents should carefully read all of the information below, with special attention to the General Conditions section. These provisions and conditions apply to LOP authorizations for the discharge of dredged or fill material into waters of the United States in the Jackson Estates First Addition, Hermantown, Minnesota consistent with the Corps' settlement proposal. The St. Paul District web page: [www.mvp.usace.army.mil/regulatory](http://www.mvp.usace.army.mil/regulatory) also contains helpful information for applicants.

### **1. ACTIVITIES ELIGIBLE FOR LOP AUTHORIZATION UNDER THESE SPECIAL PERMITTING PROCEDURES:**

Discharges of dredged or fill material into waters of the United States undertaken to resolve the Clean Water Act violations associated with the Jackson Estates First Addition in Hermantown, Minnesota. Eligible activities must be consistent with the settlement proposal prepared and noticed by the Corps. A lot by lot summary of the settlement proposal is attached to these LOP Terms and Procedures. Applications determined to be inconsistent with the settlement proposal will be evaluated as standard individual permits.

### **2. APPLICATION**

Applicants must submit a complete application to the St. Paul District of the Corps of Engineers using Corps of Engineers Individual Permit Application (ENG 4345a). A copy of the application form is available on the Corps Regulatory website at <http://www.mvp.usace.army.mil/regulatory>.

Upon receipt of a permit application, the St. Paul District will review the information to determine the completeness of the application and eligibility for these special permitting procedures. A complete application consists of the following information:

- a. **Name** and address of the applicant and authorized agent, if any.
- b. A description of the proposed activity. The description should be of sufficient detail to provide a thorough understanding of the project so that it can be explained to other agencies and the general public.
- c. The application should identify all activities that affect waters of the U.S. and that are reasonably related to the project for which an application has been submitted.
- d. Name and address of adjacent landowners.
- e. The application should identify the name of the watercourse or wetland impacted and the specific location of the impact(s).
- f. A description of any work already completed as part of the project in waters of the U.S.
- g. Signature of Applicant or authorized agent.
- h. Drawings, plans, or sketches of sufficient detail to understand the existing and proposed conditions at the site. Detailed engineering plans and specifications may be required.

The District may request additional information from the applicant in order to complete the public interest review. This information is not required for a complete application, but may be necessary in order for the District to make a decision on the permit application. The additional information could include, but is not limited to, an alternatives analysis, dredged material testing plan, and/or a compensatory mitigation plan.

Once an application has been determined to be complete, the District will conduct its evaluation of the permit application as described in the following paragraphs.

### **3. COORDINATION PROCEDURES**

Once the District has determined that the application is complete, a description of the proposal will be posted on the District's web site. At a minimum, the Internet notice will identify the applicant, project location, approximate impacts, sketches if appropriate, and any proposed/required compensatory mitigation and wetland restoration. Interested parties will have 10 days to provide comments on the proposed project.

The District will consider all comments and information received during the public/interagency review in completing its evaluation of the proposed activity.

### **ENDANGERED SPECIES**

- a. The Corps has made a determination that the settlement proposal will not affect a threatened or endangered species, a species proposed for such designation as identified under the Federal Endangered Species Act, and will not destroy or adversely modify the critical habitat of such species. The Corps will review and verify this determination for each application evaluated under these special permitting procedures.
- b. Authorization of an activity does not authorize the take of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with incidental take provisions, etc.) from the U.S. Fish and Wildlife Service, both lethal and non-lethal takes of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service or its Internet site.
- c. If it becomes apparent that a Federally listed endangered plant or animal species will be affected by work authorized by this permit, work must be stopped immediately and the St. Paul District of the Corps of Engineers must be contacted for further instruction.

### **HISTORIC PROPERTIES AND CULTURAL RESOURCES**

The Corps has coordinated the settlement proposal with the State Historic Preservation Office in accordance with the provisions of 33 CFR part 325 Appendix C. A determination has been made that the settlement proposal will not affect historic

properties listed, or eligible for listing, in the National Register of Historic Places. The Corps will review and verify this determination for each application evaluated under these special permitting procedures.

### COMPENSATORY MITIGATION

Compensatory mitigation shall be designed to replace the functions lost as result of the project. Compensatory mitigation requirements for the settlement proposal are provided in the summary table attached to these Terms and Procedures.

Use of Corps-approved mitigation banks may be an acceptable method of providing compensatory mitigation.

### AUTHORIZATION CRITERIA

The District will review each application for compliance with these terms and conditions, conduct a public hearing if one is warranted, and complete a 404(b)(1) analysis and environmental assessment. The District will generally issue a letter of permission authorizing those projects found to be in compliance with all terms and conditions of these special permitting procedures and the Section 404(b)(1) guidelines, provided the District determines that the proposed work is not contrary to the public interest.

The LOP will identify any compensatory mitigation requirements and any project-specific conditions deemed necessary by the District to insure that the proposed work meets the authorization criteria.

### **OTHER INFORMATION**

1. **PROJECT-SPECIFIC CONDITIONS.** The District will add special conditions to LOP authorizations on a case-by-case basis to ensure compliance with Federal law.
2. **FORM AND CONFIRMATION OF AUTHORIZATION.** Every LOP authorization under these procedures will be confirmed in writing by the St. Paul District via a letter of authorization to the project Applicant or authorized agent. The letter will identify any required special conditions.
3. **MODIFICATION OF PROCEDURES.** The St. Paul District has authority to modify, revoke, or suspend these procedures at any time it determines that circumstances concerning the public interest warrant such action.
4. **STATE SECTION 401 CERTIFICATION.** The Minnesota Pollution Control Agency (MPCA) has not made a determination on water quality certification for authorizations under these special permitting procedures. Unless the MPCA certifies these procedures are in compliance with water quality standards contained in Minn. R. 7050 each application will require an individual 401 certification from the MPCA. The



District will notify each applicant of the status of the 401 certification process and their responsibility to obtain certification during review of the permit application.

### **GENERAL CONDITIONS**

1. The time limit for completing work authorized by this LOP ends on December 31, 2008. If you find that you need more time to complete the authorized activity, submit your request for a time extension to the Corps for consideration at least three months before the expiration date is reached.
2. You must maintain the authorized activity in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archaeological remains while accomplishing the authorized activity you must immediately stop work and notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to the Department of the Army authorization. A copy of the certification will be attached to the authorization if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of these special permitting procedures.

### **Further Information.**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. Limits of this authorization.
  - a. This LOP does not obviate the need to obtain other Federal, state, or local authorizations required by law.
  - b. This LOP does not grant any property rights or exclusive privileges.

c. This LOP does not authorize any injury to the property or rights of others.

d. This LOP does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In authorizing work, the Federal Government does not assume any liability, including but not limited to the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR

209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1, above, establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

DEPARTMENT OF THE ARMY  
ST. PAUL DISTRICT, CORPS OF ENGINEERS  
SIBLEY SQUARE AT MEARS PARK  
190 5<sup>TH</sup> ST. EAST STE 401  
ST. PAUL, MINNESOTA 55101-1638

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OFFICIAL BUSINESS  
REGULATORY BRANCH

POSTMASTER: Please Post until Notice Expires